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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
AUSTIN, SHELTON W

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>12 December 2003</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-31</u> is/are pending in the application.
　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-31</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on <u>12 December 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.
　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
　　a)☐ All   b)☐ Some * c)☐ None of:
　　　1.☐ Certified copies of the priority documents have been received.
　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.
　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date
　<u>07/25/2005,10/26/2005,11/15/2005,12/05/2005,05/18/2006,</u>.

4) ☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

2.   Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

Regarding claim 5, the claim depends upon itself. Therefore, claim 5 is vague

and indefinite since the examiner cannot determine the intended dependency of the

claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

4.   Claims 1-10 and 12-29 are rejected under 35 U.S.C. 102(e) as being anticipated

by Gudorf et al. (US 2003/0110489).

Regarding claim 1, Gudorf et al. ("Gudorf") teaches a method, and corresponding system, of capturing user commands from a viewer that are related to viewing content (paragraph 9), comprising:

receiving a first user command at a viewer appliance at a premises of the viewer (paragraph 22—for each remote control device key stroke), subsequently receiving a second user command at the viewer appliance (paragraph 22—for each remote control device key stroke, which can be a second, subsequent command);

relative to receiving the first user command, concurrently storing information related to the first user command at the viewer appliance (Fig. 1—30; paragraphs 19, 22 and 23—all click-stream data is stored in data storage and is analyzed to determine a user profile); and

relative to receiving the second user command, concurrently forwarding the second user command from the viewer appliance to a component located remotely from the premises of the viewer (Fig. 1—32; Fig. 2; paragraphs 10, 19 and 26—data in the storage can be sent to a service provider).

Regarding claim 2, Gudorf teaches executing the first user command at the viewer appliance to alter a first aspect of the content being viewed by the viewer (Fig. 2; paragraphs 9, 18 and 22—TV channel change).

Regarding claim 3, Gudorf teaches executing the first and second user

commands at the viewer appliance to alter aspects of the content being viewed by the

viewer (Fig. 2; paragraphs 9, 18 and 22—TV channel change).

Regarding claims 4 and 15, Gudorf teaches querying whether the information

related to the first user command should be locally stored at the viewer appliance (Fig.

2; paragraphs 10, 19 and 26—decides whether the information should be used for

marketing purposes at the service provider or for local use by the processor 26).

Regarding claim 5, Gudorf teaches forwarding the information related to the first

user command from the viewer appliance to the component located remotely from the

premises of the viewer (Fig. 2; paragraphs 10 and 26—profile information determined

from click-stream data is sent to the service provider).

Regarding claims 6 and 17, Gudorf teaches querying whether the information

related to the second user command should be locally stored at the viewer appliance

(Fig. 2; paragraphs 10, 19 and 26—decides whether the information should be used for

marketing purposes at the service provider or for local use by the processor 26).

Regarding claims 7 and 19, Gudorf teaches determining a result of the second

user command relative to a present context and including the result in the information

related to the second user command that is forwarded from the viewer appliance

(paragraphs 22 and 23—time stamp and viewer ID provide a "present context" that is

included in click stream data which is analyzed to determine a user profile).

Regarding claim 8, Gudorf teaches wherein receiving the first user command and

the second user command at the viewer appliance comprises receiving the first user

command and the second user command at a set-top box (Fig. 1—14; paragraph 16—

set-top box).

Regarding claim 9, Gudorf teaches relative to receiving the second user command, concurrently storing information related to the second user command at the viewer appliance (paragraphs 19 and 26—stores all click stream data in data storage 30).

Regarding claims 10 and 21, Gudorf teaches wherein receiving the first user command and the second user command at the viewer appliance comprises receiving the first user command and the second user command at a set-top box integrated with a television (Fig. 1—14; paragraphs 16 and 17—set-top box).

Regarding claim 12, Gudorf teaches forwarding the information related to the first user command to a storage device located remotely from the premises of the viewer (paragraph 19).

Regarding claim 13, Gudorf teaches receiving targeted advertising based upon the storage information related to the user command (paragraph 26).

Regarding claims 14 and 23, please refer to the rejections of claims 1 and 2 discussed above. Furthermore, Gudorf teaches the information related to the first user command including a date and time of receipt (paragraph 22—the key stroke is time stamped by the processor).

Regarding claim 16, Gudorf teaches forwarding the information related to the first

user command from the viewer appliance to the component located remotely from the

premises of the viewer (Figs. 1 and 2; paragraphs 19 and 26—for marketing functions).

Regarding claim 18, Gudorf teaches wherein if the second user command is not

to be locally stored at the viewer appliance, then forwarding the second user command

from the viewer appliance (Fig. 2; paragraphs 19 and 26—forwarding to service provider

site if information is to be used for marketing functions).

Regarding claim 20, Gudorf teaches wherein determining the result of the second

user command relative to a present context comprises receiving a new video stream

relative to the present context (Fig. 2; paragraph 26—for example, the provide targeted

advertising that relates to the user's profile).

Regarding claim 22, Gudorf teaches receiving different content based upon the

information related to the second user command (Fig. 2; paragraph 26—for example,

the provide targeted advertising that relates to the user's profile).

Regarding claim 24, Gudorf teaches wherein the control mechanism comprises:

a first control mechanism located at the premises of the viewer for executing the first

user command (Fig. 1—26; paragraph 29—microprocessor).

Regarding claim 25, Gudorf teaches wherein the reception mechanism and the transfer mechanism are included in a set top box (Fig. 1; paragraph 19).

Regarding claim 26, Gudorf teaches wherein the control mechanism is included in the set top box (paragraph 19).

Regarding claim 27, please refer to the rejections of claims 4 and 6 discussed above.

Regarding claim 28, please refer to the rejections of claims 1, 4 and 5 discussed above.

Regarding claim 29, please refer to the rejections of claims 14 and 15 discussed above.

5.   Claims 30 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Matz et al. (US 7,212,979).

Regarding claim 30, Matz et al. ("Matz") teaches a method of capturing user commands from a viewer that are related to viewing content, comprising:

receiving the user command at a component remotely located from the premises of the viewer (Fig. 1—cable operator head-end; col. 6, lines 15-30—subscriber action database receives user commands);

upon receiving the user command, querying whether to store information related

to the user command, and if the query is successful, then storing the information related

to user command remotely from the premises of the viewer (col. 6, lines 45-62—merge

processor determines if the subscriber was watching a particular program at a particular

point in time and stores the resultant data in the database 128 accordingly); and

executing the user command (col. 8, lines 7-28).

Regarding claim 31, a method of capturing user commands from a viewer that

are related to viewing content, comprising:

receiving the user command at a component remotely from the premises of the

viewer (Fig. 1—cable operator head-end; col. 6, lines 15-30—subscriber action

database receives user commands);

upon receiving the user command, storing the information related to the user

command remotely from the premises of the viewer (col. 6, lines 45-62); and

upon receiving the user command, querying whether to execute the user

command and executing the user command when it is determined that the user

command is to be executed (col. 8, lines 7-28).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

7.   Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gudorf

(previously cited) in view of Swix et al. (US 6,718,551).

Regarding claim 11, Gudorf fails to explicitly teach after a pre-determined period

of time expires, forwarding the information related to the first user command from the

viewer appliance.

In analogous art, Swix et al. ("Swix") teaches after a pre-determined period of

time expires, forwarding information related to the first user command from the viewer

appliance (Fig. 2; col. 8, line 14-col. 9, line 16—after a predetermined interval, or "period

of time", expires, the user event data is sent to the head end).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Gudorf by waiting for a pre-determined period of

time to expire before forwarding information related to the first user command from the

viewer appliance, as taught by Swix, in order to have a consistent, set time period for

uploading user data from the user to the headend (Swix: col. 4, lines 14-33).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Shelton Austin whose telephone number is (571) 272-

9385. The examiner can normally be reached on Monday through Thursday from 8:00-

5:30. The examiner can also be reached on Fridays from 9:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chris Grant, whose telephone number is (571) 272-7294, can be reached

on Monday through Friday from 7:30-5:00. The supervisor can also be reached on

alternate Fridays from 9:00-4:00. The fax phone number for the organization where this

application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Shelton Austin
03/06/2008

/Christopher Grant/

Supervisory Patent Examiner, Art Unit 2623